

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MOLDEX-METRIC, INC., Plaintiff, v. 3M COMPANY and 3M INNOVATIVE PROPERTIES COMPANY, Defendants.	Civil No. 14-cv-01821 (JNE/LFN) DECLARATION OF KATHERINE A. MOERKE IN SUPPORT OF MOLDEX’S MOTION TO COMPEL DISCOVERY FROM 3M
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I, Katherine A. Moerke, declare as follows:

1. I am an attorney admitted to practice in the District of Minnesota and am one of the attorneys representing Plaintiff Moldex-Metric, Inc., in this matter.
2. Attached as Exhibit A is a true and correct copy of a press release entitled “3M Hearing Protection Devices Now Added to the Federal Procurement List,” with a release date of August 30, 2012, available at <http://news.3m.com/press-release/3m-hearing-protection-devices-now-added-federal-procurement-list>.
3. Attached as Exhibit B is a true and correct copy of the following webpage from May 13, 2015: <http://www.sourceamerica.org/about-us/about-us-home/52-about-us/news-room/news/518-with-new-dynamics-3m-brings-hearing-protection-to-military>.
4. Attached as Exhibit C is a true and correct copy of a document that Moldex obtained through an FOIA request, which reflects multiple e-mail exchanges between David Brown of NISH, Jill Burt of GSA Supply, Stephanie Blake of NISH, Janet Yandik of U.S. AbilityOne Commission, Kimberly Roland of NISH, Michael Jurkowski of US

AbilityOne Commission, Barry Lineback of U.S. AbilityOne Commission, Dennis Lockard of U.S. AbilityOne and Kimberly Zeich of U.S. Ability One, dated March 20, 2013, to June 26, 2013.

5. Attached as Exhibit D is a true and correct copy of a presentation entitled “Mandatory Source Requirement” from the AbilityOne® Program dated December 2011, available at <http://www.abilityone.gov/commission/documents/03.02.Mandatory Source Requirement Presentation 1-11-12.pdf>. .

6. Attached as Exhibit E is a true and correct copy of document produced with production numbers 3M00001715-16 in 3M’s prior patent lawsuit against Moldex.

7. Attached as Exhibit F is a true and correct copy of 3M’s Response to Moldex’s First Set of Requests for Production, dated March 30, 2015.

8. Attached as Exhibit G is a true and correct copy of 3M’s Response to Moldex’s Second Set of Requests for Production, dated May 8, 2015.

9. Attached as Exhibit H is a true and correct copy of 3M’s Response to Moldex’s Second Set of Interrogatories, dated May 8, 2015.

10. Attached as Exhibit I is a true and correct copy of 3M’s Responses to Moldex’s Requests for 3M to Supplement Document Requests in the Patent Litigation, dated April 24, 2015.

11. Attached as Exhibit J is a true and correct copy of document entitled “E-A-RCAL ATTENUATION TEST REPORT” and dated January 25, 2000. This document was previously filed in this lawsuit as Docket 38 on July 30, 2014.

12. Attached as Exhibit K is a true and correct copy of pages 1, 11-13, and 24 of Moldex's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment dated March 1, 2013, which was filed under seal in 3M's prior patent suit against Moldex. (filed under seal)

13. Counsel for the parties met and conferred on multiple occasions regarding search terms to be used to collect ESI to review for production, including on April 28, May 4, and May 8. During these meet-and-confer teleconferences, 3M objected to using search terms such as "JWOD," "NISH," or "essentially the same," as well as "NRR" along with "statistical variability" related to 3M's categorical objections to Moldex's document requests. During these teleconferences, the parties agreed that 3M's categorical relevance objections to Moldex's requests will need to be resolved by the Court.

14. During a meet-and-confer teleconference between counsel for the parties on May 14, 2015, 3M's counsel indicated that 3M will only agree to log responsive documents constituting or referencing privileged communications about 3M's prior patent lawsuit against 3M on a privilege log, if Moldex also agrees to log responsive documents constituting or referencing privileged communications about that lawsuit.

15. During the pretrial scheduling conference before The Honorable Franklin L. Noel on March 31, 2015, counsel for 3M referred to Moldex's lawsuit as a "case about a case."

Dated: May 15, 2015

By: s/Katherine A. Moerke
Katherine A. Moerke